Cortland Transit, Inc. *and* Teamsters, Local Union No. 317. Case 3–CA–19655

July 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charges filed by the Union on October 5 and November 21, 1995, and January 16 and February 20, 1996, the General Counsel of the National Labor Relations Board issued a complaint on February 27, 1997, against Cortland Transit, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint on March 10, 1997, it withdrew that answer on May 21, 1997.

On June 9, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On June 11, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on May 21, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Cortland, New York, has been engaged in providing public transportation. Annually, the Respondent, in conducting its business operations, purchases and receives at its Cortland, New York facility, goods and materials valued in excess of $50,000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About April 1995, the Respondent told an employee to ask the Union why employees were not receiving their regularly scheduled wage increases, thereby implying that the employees' selection of the Union as their collective-bargaining representative was the reason for the Respondent's refusal to grant regularly scheduled wage increases to its employees.

Since about March 1995, and at all times thereafter, the Respondent has withheld and refused to grant regularly scheduled wage increases to its employees. About October 19 and December 29, 1995, the Respondent issued written warnings to its employee Sharon Partridge. The Respondent engaged in this conduct because its employees formed, joined, or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the driver unit):

> All full-time and part-time busdrivers and bus aides employed by the Employer at its 44 River Street, Cortland, New York facility; excluding all maintenance employees, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10239.

The following employees of the Respondent also constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the maintenance unit):

> All full-time and part-time maintenance employees, including mechanics and bus washers, employed by the Employer at its 44 River Street, Cortland, New York facility; excluding all bus drivers and bus aides, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10240.

On March 3, 1995, a representation election was conducted among employees in the driver and maintenance units. On March 23, 1995, the Union was certified as the exclusive collective-bargaining representa-

tive of the driver unit. On May 3, 1995, the Union was certified as the exclusive collective-bargaining representative of the maintenance unit. At all times since March 3, 1995, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the units.

Since about June 30, 1995, the Union, by letter, has requested that the Respondent furnish the Union with certain information regarding the Respondent's act of terminating the employment of its employee Richard Rupe. About August 11, 1995, the Union, by letter, repeated its request that the Respondent provide the Union with this information. This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the units. Since about July 10, 1995, and continuing to date, the Respondent has failed and refused to furnish the Union with all of the relevant information requested by it, as described above.

Since about March 1995, and continuing to date, the Respondent has unilaterally withheld and refused to grant regularly scheduled wage increases to its employees. About September 27, 1995, the Respondent unilaterally implemented a rule regarding employee limits on bus idling at its facility. About November 1995, the Respondent unilaterally implemented an employee dress code providing for the wearing of sweatshirts as part of its employees' uniform, changed the established purpose and use of its vending machine proceeds, ceased providing a Christmas party and summer picnic to its employees, and implemented a drug and alcohol policy. About February 1996, the Respondent also unilaterally implemented a rule regarding employees' responsibility for lost or missing monthly bus passes. These subjects relate to wages, hours, and other terms and conditions of employment of the units and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By withholding wage increases and issuing written warnings, the Respondent has also been discriminating with regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

3. By refusing to furnish information and by making unilateral changes, the Respondent has also been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent discriminatorily issued written warnings to employee Sharon Partridge, the Respondent shall be required to rescind the warnings.

Furthermore, having found that the Respondent has unilaterally and discriminatorily withheld and refused to grant regularly scheduled wage increases to its employees, we shall order the Respondent to grant the employees' regularly scheduled wage increases and to make whole the employees for any losses of earnings suffered as a result of its failure to do so since March 1995. Backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information it requested on June 30 and August 11, 1995.

Finally, having found that the Union unilaterally implemented various changes in wages, hours, and working conditions, we shall order the Respondent, at the request of the Union, to rescind those changes and to make whole the unit employees for any loss of wages and benefits incurred as a result of the Respondent's unilateral changes, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Cortland Transit, Inc., Cortland, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implying that the employees' selection of Teamsters, Local Union No. 317 as their collective-bargaining representative is the reason for its refusal to grant regularly scheduled wage increases to its employees.

(b) Withholding or refusing to grant the regularly scheduled wage increases to its employees or issuing written warnings to its employees because they form, join, or assist the Union or engage in concerted activities or to discourage employees from engaging in these activities.

(c) Refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the following units:

> All full-time and part-time busdrivers and bus aides employed by the Employer at its 44 River Street, Cortland, New York facility; excluding all maintenance employees, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10239.
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> All full-time and part-time maintenance employees, including mechanics and bus washers, employed by the Employer at its 44 River Street, Cortland, New York facility; excluding all bus drivers and bus aides, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10240.

(d) Unilaterally changing the wages, hours, or working conditions of unit employees by withholding or refusing to grant regularly scheduled wage increases to its unit employees, implementing rules regarding employee limits on bus idling at its facility, implementing employee dress codes, changing the established purpose and use of its vending machine proceeds, ceasing to provide a Christmas party and summer picnic to its employees, implementing a drug and alcohol policy, or implementing rules regarding employees' responsibility for lost or missing monthly bus passes.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the warnings given Sharon Partridge on October 19 and December 29, 1995.

(b) Grant the employees the regularly scheduled wage increases and make them whole for any loss of earnings resulting from its failure to grant such increases since about March 1995, with interest, in the manner set forth in the remedy section of this decision.

(c) Provide the Union the information it requested on June 30 and August 11, 1995.

(d) At the request of the Union, rescind the unilateral changes made about September 27 and November 1995 and February 1996, and make whole the unit employees for any loss of wages and benefits incurred as a result of the changes, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Cortland, New York, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 5, 1995.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 10, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT imply that our employees' selection of Teamsters, Local Union No. 317 as their collective-bargaining representative is the reason for our refusal to grant regularly scheduled wage increases to our employees.

WE WILL NOT withhold or refuse to grant the regularly scheduled wage increases to our employees or issue written warnings to them because they form, join, or assist the Union or engage in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT refuse to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the following units:

> All full-time and part-time busdrivers and bus aides employed by us at our 44 River Street, Cortland, New York facility; excluding all maintenance employees, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10239.
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> All full-time and part-time maintenance employees, including mechanics and bus washers, employed by us at our 44 River Street, Cortland, New York facility; excluding all bus drivers and bus aides, office clerical employees, professional employees, guards and supervisors as defined in the Act; as certified by the National Labor Relations Board by Case 3–RC–10240.

WE WILL NOT unilaterally change the wages, hours, or working conditions of our unit employees by withholding or refusing to grant regularly scheduled wage increases to them, implementing rules regarding employee limits on bus idling at our facility, implementing employee dress codes, changing the established purpose and use of vending machine proceeds, ceasing to provide a Christmas party and summer picnic for our employees, implementing a drug and alcohol policy, or implementing rules regarding employees' responsibility for lost or missing monthly bus passes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the warnings given Sharon Partridge on October 19 and December 29, 1995.

WE WILL grant our employees the regularly scheduled wage increases and make them whole for any loss of earnings resulting from our failure to grant such increases since about March 1995, with interest.

WE WILL provide the Union the information it requested on June 30 and August 11, 1995.

WE WILL, at the request of the Union, rescind the unilateral changes made about September 27 and November 1995 and February 1996, and make whole the unit employees for any loss of wages and benefits incurred as a result of the changes, with interest.

CORTLAND TRANSIT, INC.